2013 IL App (1st) 131383-U

FIRST DIVISION
September 30, 2013

No. 1-13-1383

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF ISAIAH H., a minor,	)	
	)	
(PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Petitioner-Appellee,	)	of Cook County
	)	
v.	)	No. 12 JD 4042
	)	
ISAIAH H., a minor,	)	Honorable
	)	Carol A. Kelly,
Respondent-Appellant.)	)	Judge Presiding.
	)	
	)	
	)	

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

O R D E R

***Held*:** Trial court not required to specifically address each factor listed in the statute when stating her reasons for committing a minor to the DOJJ; trial court did not abuse its discretion when it committed minor to DOJJ; and commitment order must be modified to reflect a maximum sentence of three years.

¶ 1 Isaiah H., a minor (respondent), was found guilty of possession of a controlled substance and sentenced to the Department of Juvenile Justice (DOJJ). Respondent now appeals, arguing that the trial court failed to comply with the mandatory requirements of the statute governing the commitment of juveniles to the DOJJ, and that the sentencing order must be modified. For the following reasons, we affirm the decision of the trial court and modify the imposed sentence.

¶ 2 I. BACKGROUND

¶ 3 On October 10, 2012, while respondent was serving an 18-month probation term for possession of cocaine, and while awaiting sentencing for an adjudication of delinquency for theft, he was arrested for possessing 13 individually-wrapped bags of suspect heroin. On October 11, 2012, a probable cause hearing was held in which the trial court found probable cause. Respondent requested electronic monitoring at the house of his grandmother, who is his legal guardian. The trial the court denied the request and instead ordered respondent to attend inpatient drug treatment at Gateway and to comply with all evaluations and recommendations relating to the treatment. Specifically, the court stated, "if you leave the program before you successfully complete it, I will be notified. I will issue a warrant for your arrest. And I can tell you right now you have a sentencing pending [in another case.] You have a new case. If you're found delinquent on this new case and you've left the Gateway program, you'll be getting your treatment in the Department of Juvenile Justice."

¶ 4 On October 31, 2012, respondent's probation officer indicated that respondent had run away from Gateway. The trial court issued a juvenile arrest warrant against respondent that day

and ordered him back into custody until his next court date.

¶ 5 Respondent was brought back into custody, and a bench trial was held in this case on November 29, 2012. The State's first witness was Officer Edward Dedo. Officer Dedo testified that on October 10, 2012, at about 12:45 in the afternoon, he was on patrol with his partner Officer James Sajdak in the area of 610 North Christiana Avenue. They were riding in a Chevy Tahoe, and saw respondent in a vacant lot bending down and picking up a plastic bag. Officer Dedo saw respondent stand up, look at their vehicle, and drop the object and start to walk away. Officer Dedo caught up with respondent and detained him. The object respondent had dropped was a clear bag that contained 13 small bags of a white powdery substance. The officers found $249 on respondent's person.

¶ 6 It was then stipulated that if Linda Jenkins, a forensic chemist, were called to testify, she would testify that the items recovered tested positive for heroin and the actual weight of those items was .3 grams, and the total estimated weight of the 13 items would be 4.5 grams.

¶ 7 Respondent then testified on his own behalf. He testified that he was near a vacant lot on the day in question because he was attempting to use his uncle's washroom. He could not get into his uncle's house, so he urinated in the vacant lot next door. He then bent down to tie his shoe, when he saw the police officers. The officers then arrested him. Respondent testified that he never picked up a bag that he knew to have drugs in it. At the conclusion of evidence, the trial court entered a finding of delinquency.

¶ 8 Thereafter, respondent requested in-patient drug treatment at Gateway rather than commitment to the DOJJ. The trial court stated it was willing to give respondent a chance but

that he had destroyed property and had numerous violations during his previous stay at Gateway. The trial court noted that respondent had already served an extended time-out for making sexually inappropriate comments to female staff, he maliciously destroyed county property, he was involved in two separate fights, he received a total of six time-outs during this period, and he was disruptive in class, disrespected his peers, and used excessive profanity. The trial court stated, "If you go to an inpatient drug treatment program, you have to follow the rules or they're going to throw you out."

¶ 9 There was not a bed open at Gateway, so the probation officer requested Intensive Probation Supervision instead. The trial court agreed, but the IPS rejected respondent based on his history. Thereafter, a bed opened up at Gateway and the trial court allowed respondent to be admitted to Gateway. The trial judge stated that she was not sure she was doing the right thing by giving respondent another opportunity to try inpatient treatment since he had left Gateway before. The trial judge stated, "If you do it again and you get picked up on that warrant you just go directly to the Department of Corrections. Do you understand this?" The respondent replied, "Yes." On February 19, 2013, the trial court was informed that respondent had again left Gateway after a short duration. An arrest warrant was issued.

¶ 10 On April 4, 2013, respondent was back in custody and present in court. His probation officer asked that he not be sentenced to the DOJJ, and that he instead be given a probation sentence. The trial court responded that respondent had been given every opportunity to comply with probation, including drug treatment at Gateway. The trial court noted that respondent did not comply with the rules at Gateway and ran away from the facility twice. The trial court further

noted:

> "He's had four juvenile arrest warrants. He's been held in custody six different times. His first opportunity for Gateway he ran out the back door and wasn't even there for an hour after being placed in the facility. And then he was given a second opportunity. He left there after a couple weeks. I think probation services have been exhausted."

¶ 11 The trial court then found that it was in the best interest of respondent and the public that he be adjudged a ward of the court, and sentenced respondent to commitment to the DOJJ. The trial court stated,

> "All the statutory prerequisites have been complied with. Placement on probation will not serve the best interest of the minor respondent and the public. His parent or guardian is unable to discipline him. I've considered all the factors contained in the D[O]JJ commitment report. Reasonable efforts have been made to prevent the minor from being removed from the home."

¶ 12 Respondent now appeals.

¶ 13 II. ANALYSIS

¶ 14 Respondent contends on appeal that the trial court failed to comply with the requirements of the Juvenile Court Act of 1987 (705 ILCS 405/5 *et seq*. (West 2012)) (the "Act"). Specifically, respondent argues that the trial court was required to consider efforts to locate a less restrictive alternative, and to evaluate the need for incarceration by addressing specific factors

before committing respondent to the DOJJ. The State responds that the trial court complied with the requirements of the Act and only committed respondent to the DOJJ after exhausting less restrictive alternatives. We agree with the State.

¶ 15 As a preliminary matter, the State contends that respondent has forfeited this argument on appeal where he failed to raise any objection to the sentencing at trial, and failed to raise it in a post-trial motion. See *People v. Enoch*, 122 Ill. 2d 176, 185-86 (1988) (in order to preserve an issue on appeal, it must be both objected to at trial and raised in a post-trial motion). Respondent contends that defense counsel strongly objected to the judge committing respondent to the DOJJ, and that a post-sentencing motion is not required in proceedings to preserve sentencing issues in delinquency cases. Respondent is correct that the post-trial motion requirement is inapplicable to delinquency appeals (*People v. Hugo*, 322 Ill. App. 3d 727, 738 (2001)), however that does not excuse respondent's failure to object to this issue in the trial court. While respondent may have argued vigorously for a less restrictive alternative to the DOJJ, at no time did respondent contend that the trial court had not properly addressed all the issues listed in the statute before sentencing respondent. Accordingly, this issue is forfeit. See *People v. Thompson*, 238 Ill. 2d 598, 612 (2010) (important to apply forfeiture rule uniformly because "failure to raise a claim properly denies the trial court an opportunity to correct an error or grant a new trial, thus wasting time and judicial resources.") Respondent nevertheless urges us to review the issue pursuant to the plain error doctrine.

¶ 16 The plain error doctrine bypasses normal forfeiture rules and allows a reviewing court to consider unpreserved claims of error in certain circumstances. *Thompson*, 238 Ill. 2d at 613. We

apply the plain error doctrine when (1) "a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) "a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). The first step of plain error review, then, is to determine whether any clear or obvious error occurred at all. *People v. Walker*, 232 Ill. 2d 113, 124-25 (2009).

¶ 17 Section 405/5-750 of the Act states in pertinent part:

> "[W]hen any delinquent has been adjudged a ward of the court under this Act, the court may commit him or her to the Department of Juvenile Justice, if it finds that (a) his or her parents, guardian or legal custodian are unfit or unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and the best interests of the minor and the public will not be served by placement under Section 5-740, or it is necessary to ensure the protection of the public from the consequences of criminal activity of the delinquent; and (b) commitment to the Department of Juvenile Justice is the least restrict alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrict alternative to secure confinement. Before the court commits a minor to the Department

of Juvenile Justice, it shall make a finding that secure confinement is necessary, following a review of the following individualized factors:

(A) Age of the minor.

(B) Criminal background of the minor

(C) Review of results of any assessments of the minor, including child centered assessments such as the CANS.

(D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability and if so what services were provided as well as any disciplinary incidents at school.

(E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and if so what services were provided and whether the minor was compliant with services.

(F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason for the services were unsuccessful.

(G) Services within the Department of Juvenile Justice that will meet the individualized needs of the minor." 705 ILCS 405/5-750 (West 2012)).

¶ 18 Respondent contends in his appellate brief that the trial court failed to comply with the

statute because "at no time did the court seek to review any of the individualized statutory factors such as Isaiah's age, educational background, possible learning disabilities, his failure to graduate the 8th grade, or his health, including emotional and mental health, despite a passing reference months before sentencing to 'high blood pressure and medications,' which was never explored or detailed."

¶ 19 However, the trial court specifically stated during respondent's sentencing hearing that "all the statutory prerequisites have been complied with." One such prerequisite was for the trial court to review the individualized factors in the statute before making its finding. We will not mandate an extra requirement that the trial court specifically articulate each of the individualized factors when making its finding. *In re Consolidated Objections to Tax Levies of School District No. 205*, 193 Ill. 2d 490, 496 (2000) (We may not depart from the plain language of the statute by reading into it exceptions, limitation, or conditions that conflict with the express legislative intent). A complete review of the record reveals that this case was before this trial judge over the span of twelve different court dates, and that the trial judge was very familiar with respondent and the different factors listed in section 5-750 of the Act. Accordingly, we find that the trial court adequately complied with the statute, and thus there was no clear or obvious error that would warrant plain error review.

¶ 20 We note that respondent did not argue on appeal that the findings of fact were against the manifest weight of the evidence, or that the court committed an abuse of discretion by selecting an inappropriate dispositional order. *In re Seth S.*, 396 Ill. App. 3d 260, 275 (2009) (citing *In re J.W.*, 386 Ill. App. 3d 847, 856 (2008)) (trial court's decision following a dispositional hearing

"will be reversed only if the findings of fact are against the manifest weight of the evidence or the court committed an abuse of discretion by selecting an inappropriate dispositional order"). Accordingly, we find that these arguments are waived on appeal, as they were not briefed in respondent's appellate briefs. *Mayfield v. ACME Barrel Co.*, 258 Ill. App. 3d 32, 37 (1994) (issues not raised by appellant in brief are generally considered waived); Ill. S. Ct. Rule 341 (h) (7) (eff. Feb. 6, 2013) (points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing).

¶ 21 Waiver aside, to the extent that respondent contends that the trial court abused its discretion by not reviewing the proper factors before committing respondent to the DOJJ, we would nevertheless find that the trial court did not abuse its discretion. *Id.*; see also *In re Griffin*, 92 Ill. 2d 48, 54 (1982); *In re S.M.*, 229 Ill. App. 3d 764, 768-69 (1992) (the disposition of a minor rests within the sound discretion of the trial judge, and absent a showing of abuse, the trial court's determination will not be reversed by this court). A trial court abuses its discretion only where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *In re A.W.*, 397 Ill. App. 3d 868, 873 (2010).

¶ 22 In the case at bar, the trial judge noted that she complied with the statutory prerequisites, that placing respondent on probation would not serve the best interest of respondent or the best interest of the public, that his parent or guardian was unable to discipline him, that reasonable efforts had been made to prevent respondent from being removed from the home, and that she had considered all the factors contained in the DOJJ commitment report.

¶ 23 A review of the record supports these findings made by the trial court. Respondent was

14 years old[1] when he was arrested for possession of 13 bags of heroin while on probation for his delinquency in another possession case. Respondent was given numerous opportunities for less restrictive alternatives to commitment to the DOJJ, but continuously violated the terms. Respondent was ordered to attend inpatient drug counseling at the Gateway Foundation and to comply with the rules and regulations while at Gateway. Respondent ran away from Gateway soon after he was checked in. After respondent was found delinquent for charges in this case, he was given another chance, despite the probation officer's recommendation that respondent be committed to the DOJJ, in the form of a referral to Intensive Probation Supervision. However, respondent was rejected from the program due to his history of non-compliance with probation. At respondent's request, the court ordered another inpatient drug treatment evaluation. The trial judge expressed concern over giving respondent another chance at Gateway since he had broken the rules and ran away last time. Nevertheless, respondent was accepted to Gateway, and warned by the trial court that if he failed to comply with the rules at Gateway, he would be arrested and committed to the DOJJ. Respondent again ran away from Gateway, and it took several months to execute an arrest warrant because respondent's whereabouts were unknown. Respondent's guardian (his grandmother) told the probation officer that respondent would leave home for days at a time without permission and that she could not control or discipline him.

¶ 24 Moreover, the Juvenile Court's social investigation addendum, filed on April 4, 2013, noted that respondent's probation officer indicated that respondent had not been in compliance

[1]Respondent was 14 years old at the time of his arrest, but 15 years old at the time of sentencing.

with any rules and regulations of the court, that respondent had a total of four arrest warrants, and that respondent had been held in the Juvenile Temporary Detention Center over six times. The probation officer also indicated that respondent ran away from Gateway twice, and that while he was in Gateway, he was noncompliant. The probation officer visited the facility and found respondent defiant and not following the rules. Respondent was also given the opportunity for Intensive Probation Services, but was rejected by the program. Accordingly, the probation officer recommended that respondent be committed to the DOJJ.

¶ 25 Additionally, the Intensive Probation Supervision intake report noted that respondent was not currently enrolled in school, and that his last school was Morton Elementary School, where he was a truant, and that the last date of school attendance was the Fall of 2011. Respondent had regular education and had not been evaluated to determine special education eligibility, but had been referred to Educational Advocacy. He had not graduated eighth grade at the time of his arrest. The intake report also indicated that respondent had no history of mental illness, and that prior to Gateway, had no previous counseling. Accordingly, after a review of the record, we find that the trial court's findings were based on the facts in the record, and that the trial court's dispositional order committing respondent to the DOJJ was not an abuse of discretion.

¶ 26 Respondent's second contention on appeal is that the order of commitment should be amended to reflect that respondents' sentence shall terminate in three years, and the State agrees. The Act provides that a minor committed to the DOJJ must be held until the age of 21 (705 ILCS 405/5-750 (West 2010)), but "in no event shall a guilty minor be committed to the [DOJJ] for a period of time in excess of that period for which an adult could be committed for the same act."

705 ILCS 405/5-710(7) (West 2010).

¶ 27 Here, respondent was 15 years old at the time of sentencing, and was found delinquent for possession of less than 1.3 grams of a controlled substance. This offense is classified as a Class 4 felony (720 ILCS 570/402(c) (West 2010)), which carries a maximum term of three years' incarceration (730 ILCS 5/5-4.5-45 (West 2010)). Respondent will not reach the age of 21 before these three years lapse, and thus the commitment order should be modified to clarify that respondent's commitment shall terminate in no more than three years.

¶ 28 III. CONCLUSION

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, and modify the sentence to reflect a maximum incarceration of three years.

¶ 30 Judgment affirmed; sentence modified.